

INFORMAL DISPOSITIONS

10120–10156 *Informal Dispositions*

10120 *Withdrawal*

10120.1 *Generally:* This subsection refers to withdrawal prior to issuance of complaint. A C case may be closed by withdrawal of the charge at any time. Withdrawal is not automatic, however, it must be approved by the Regional Director.

10120.2 *Unsolicited Withdrawal:* The charging party may, on his/her own initiative, request a withdrawal of the charge. (There is a withdrawal request form but it need not be used; any unequivocal written expression of a desire to withdraw is sufficient.)

If withdrawal is requested, the reason should be ascertained and included in the report and recommendation thereon. Normally, Washington authorization for the approval of an *unsolicited*, voluntary withdrawal need not be obtained. *Exception:* In all cases where complaint has been authorized by any division or branch in Washington, clearance should be obtained from that division or branch.

10120.3 *Solicited Withdrawal:* (See sec. 11751 for cases that are to be submitted before soliciting withdrawals.)

A charging party should be given the opportunity to withdraw a charge voluntarily before the charge is dismissed (sec. 10122.3). The charging party should be informed that, unless the charge is withdrawn within a stated reasonable time, the Board agent will recommend that the charge be dismissed.

Normally the charging party should be advised, orally or otherwise, in detail of the reasons for solicitation of withdrawal. In the event of a refusal to withdraw, the charging party must be informed, at the time of such refusal, that a summary report setting forth the reasons for dismissal will be included in the dismissal letter, unless it is requested that such report be excluded. The charging party must also be informed that the charged party will receive a copy of the dismissal letter, containing the summary report. (See also sec. 10122.3.)

The Board agent should prepare and place in the file Form NLRB-4549, Information to Charging Party on Reasons for Proposed Dismissal.

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A reasonable period for submission of a withdrawal should be given before dismissal action is taken. If the withdrawal request is received, the report and recommendation thereon should contain the reasons for soliciting the request.

10120.4 *Positions of Other Parties:* Except in certain CP cases (sec. 10120.2), when a withdrawal request has been received, it is unnecessary to ascertain the positions of other parties to the matter unless it appears that such parties will be adversely affected by approval of the request. Likewise, a withdrawal request will be honored unless such disposition will result in a distortion of the purposes of the Act to the detriment of persons other than the charging party. For example, a withdrawal request may not be honored if such disposition will result in a distortion of the purposes of the Act to the detriment of persons such as alleged discriminatees other than the charging party. Further, in determining whether to approve a withdrawal request, appropriate consideration should be given to whether authorization of the withdrawal is inconsistent with Agency settlement practices and policies or otherwise interferes with the effectuation of the Act or its purposes.

10120.5 *Refiling of Same Allegation:* A closing of a C case pursuant to a withdrawal request constitutes a disposition of the issues *without prejudice*. However, the 10(b) period will apply with respect to any refiling of the same allegations. The matter, if reopened, should be considered and handled as a new charge.

10120.6 *Withdrawal Request after Dismissal:* If a withdrawal request is received *after* the charge has been dismissed but *during* the 14-day (or 7-day) period for appeal of the dismissal and if good cause exists for approving the withdrawal request had it been filed prior to the dismissal, the dismissal should be *revoked* and the withdrawal request should be put in effect. (See Rules, Secs. 102.19 and 102.81.)

If a withdrawal request is received while the case is pending on appeal, the Regional Director should immediately notify the Office of Appeals before he issues his letter revoking the dismissal and approving the withdrawal.

10120.7 *Notification to Parties:* On approval of a withdrawal request, the Regional Director should notify all parties that the charge, with his/her approval, has been withdrawn. No reasons for the withdrawal or the approval should be given in the notification.

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10122–10122.3

10122 *Dismissal:* (See sec. 11751 for cases that should be submitted to Washington before dismissing a charge.)

10122.1 *Generally:* Strictly speaking, an unfair labor practice is “dismissed” (except in certain CD cases) when the Regional Director, on behalf of the General Counsel, refuses to institute formal proceedings (issue a complaint). (For CD charges see secs. 10208–10214.) Thus, a case should be dismissed in the absence of ground for formal proceedings.

10122.2 *Basis for Dismissal:* Dismissals should be based on specific grounds such as the following:

- a. Legal insufficiency of details on the face of the charge
- b. Lack of cooperation by charging party
- c. It does not appear that the Board would assert jurisdiction under its existing standards
- d. Lateness of the filing of the charge (10(b))
- e. Lack of sufficient evidence
- f. Formal proceedings will not effectuate the purposes of the Act (covers isolatedness, policy determinations)
- g. “Unilateral” settlement agreement effectuating purposes of the Act.

10122.3 *Notification:* The charging party (having first been given an opportunity to withdraw) should be notified by certified mail of the dismissal. The dismissal letter should contain a summary report of reasons for refusing to issue complaint unless the charging party has specifically rejected the summary (sec. 10120.3). Where summary report has been rejected, see sec. 10122.2 for brief statement of appropriate reason.

The names and addresses of all interested parties and counsel, who have entered appearances on their behalf during the investigation, should be listed on the dismissal letter, and copies mailed to such persons at the same time the original letter is mailed to the charging party.

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NOTE: The summary must provide the type of detailed explanation that will permit the charging party, if the individual should desire, to direct an appeal to the dispositive aspects of the dismissal. Dismissal letters should not issue with only a statement of the ultimate conclusions as the stated reasons for dismissal, but rather should provide the parties with the details of the intermediate propositions of law and fact on which the Region has relied to support the ultimate conclusions. For example:

- a. The particular reason for a deficiency should be stated.
- b. The material element of the charge that was found unsupported should be particularized.
- c. When there are alternatives or multiple bases for disposition, they should all be listed.

10122.4 *Appeal Rights:* The dismissal letter (sec. 10122.8) must instruct how an appeal may be filed with the General Counsel. Normally, the charging party is given 14 days (see Rules, Sec. 102.19) in which to file an appeal. However, the charging party is given only 7 days (see Rules, Sec. 102.81) in which to file an appeal when an 8(b)(7) charge is dismissed and an expedited election directed; or, when a charge alleging violations of sections of the Act other than 8(b)(7), but which are related to an 8(b)(7) proceeding, is dismissed. (See sec. 11840.4 for computation of time periods.) Form NLRB-4938, Procedure for Filing an Appeal, should be enclosed with dismissal letter.

The dismissal letter also requests that, if an appeal is filed, the person doing so use the Notice of Appeal forms—sufficient copies of which are enclosed with the dismissal letter—to advise the other parties that such an action has been taken. (See Rules, Sec. 102.19.)

Under Section 102.19 of the Board's Rules and Regulations, copies of the General Counsel's acknowledgment of the filing of a C-case appeal will be served on all parties. Copies of any ruling on a request for extension of time to file an appeal will also be served on all parties.

10122.5 *Partial Dismissal:* Where the Region finds only a portion of the charge to have merit, the remaining nonmeritorious allegations may be dismissed. In such case the dismissal letter should make it clear that the meritorious allegations are not dismissed and that, as to the portion of the charge dismissed, the usual opportunity to file an appeal is afforded.

- a. Complaint may issue as to the meritorious allegations, but if the partial dismissal is appealed hearing should not be held until after disposition of the appeal.
- b. If a settlement agreement as to the meritorious allegations is entered into, approval thereof should be withheld until after the expiration of the time for filing an appeal from the dismissal, or until after the disposition of an appeal.

In cases involving closely related cross-filings (e.g., 8(a)(5)-8(b)(3) or 8(b)(7)-8(a)(5) situations), where the Region finds merit to one of the charges but dismisses the other, the issuance of complaint should be withheld, unless otherwise instructed by Washington, until after the expiration of the time for filing an appeal, or until after disposition of an appeal.

NOTE: In each of the foregoing situations, the Office of Appeals should be notified of the pending settlement or complaint so that the appeal may be expedited.

10122.6 *Reopening of Issues:* The General Counsel has authority to reopen a case by virtue of the discretion vested in him by Section 3(d) of the Act under certain circumstances. In such cases, the 10(b) period is tolled as of the date the charge was filed rather than the date of its reinstatement. After a timely filed charge has been dismissed or withdrawn as a result of Board agent solicitation, it may be reinstated after the expiration of the 10(b) period under certain circumstances. In appropriate cases, this authority can be exercised not only by the General Counsel but also by the Regional Director acting as his agent. Thus, the Regional Director has the authority, in appropriate cases, to revoke a dismissal or approval of a solicited withdrawal, and reopen the case for reconsideration and issue complaint more than 6 months after the alleged unfair labor practice has occurred, in the following circumstances:

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- a. Where evidence is newly discovered (*California Pacific Signs*, 233 NLRB 450 (1977))
- b. Where an error was made in an initial failure to assert jurisdiction (*Airport Connection*, 243 NLRB 1076 (1979)).

(It is expected that a new charge containing the same allegations as those in the charge previously dismissed or withdrawn and unaccompanied by sufficient valid grounds for proceeding will be summarily dismissed.)

10122.7 *Revocation of Dismissal or Solicited Withdrawal:* In all cases where the charging party's appeal has been denied and the Region believes that a revocation of the dismissal is appropriate, the Region must obtain clearance from the Office of Appeals in order to revoke the dismissal. (It is expected that reinstatement of the charge in those cases where the appeal has been denied would be rare and would never be authorized to permit withdrawal of the charge.) Where an appeal is pending, revocation shall be preceded by telephonic notification by the Region to the Office of Appeals of the intent to revoke the dismissal.

In all cases other than those listed in section 10122.6a and b, the Region must obtain authorization from the Division of Advice if reinstatement of the charge would occur more than 6 months after the occurrence of the underlying unfair labor practice. Where no appeal has been denied and reinstatement of the charge occurs within 6 months after the occurrence of the underlying unfair labor practice, the Regional Director may revoke the dismissal or solicited withdrawal without obtaining clearance from the General Counsel's office.

10122.8 *Pattern 1:* Pattern for dismissal of charge in CA, CB, CC, CD, or CE case. Charging party is given 14 days (see Rules, Sec. 102.19) in which to file an appeal *except when C case is directly related to an 8(b)(7) proceeding*. In such case the charging party is given 7 days (see Rules, Sec. 102.81) in which to file an appeal. (See sec. 11840.4 or Sec. 102.114 of Rules and Regulations for computing time periods.)

If the charging party *has rejected* the summary report, see section 10122.2 for concise statement of basis for dismissal.

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[Charging Party]

Re: [Case name]
[Case Number]

Gentlemen:

Dear [name]:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted inasmuch as

[Statement of reason for dismissal]

I am, therefore, refusing to issue [reissue] a complaint in this matter.

[In CD cases only, the following language should be substituted for the last sentence of the above paragraph: I am, therefore, declining to issue notice of hearing as provided in Section 10(k) of the Act and I am refusing to issue complaint in this matter.]

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, Washington, D.C., and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons on which it is based. The appeal must be received by the General Counsel in Washington, D.C., by the close of business on [month-day-year]. On good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

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If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

, Regional Director

cc: Respondent
Other parties
General Counsel
[If related to 8(b)(7) charge, copy to other interested labor organization(s).]

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10122.9–10122.10

10122.9 *Pattern for Revocation of Dismissal:*

[Charging Party]

Re: [Case name]
[Case number]

Gentlemen:

On [date] I declined to issue complaint in this matter alleging

On [date] an appeal of my action was filed by

Since I have reconsidered my action in declining to issue a complaint in this matter alleging and accordingly, on behalf of the General Counsel, this is to inform you that the matter is deemed to be remanded to the undersigned for further processing, and I hereby revoke the action reflected in my letter of [date].

[An opportunity to settle in absence of complaint can be set forth here.]

Very truly yours,

, Regional Director

cc: Other parties
General Counsel

10122.10 *Extension of Time to File Appeal:* Immediately on receipt of a copy of request for extension of time to file an appeal, the Regional Director should advise Office of Appeals whether there is any objection to granting the request, and, if so, the reason therefor. Also, advise in detail if there are any concurrent or other cases that might be affected by the granting of the request.

NOTE: If charge is partially dismissed, see section 10122.5 for permissible action during appeal period or while appeal is pending.

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10122.11 *Appeals (Requests for Review):* The Regional Office file should be transmitted to Office of Appeals as soon as possible after receipt of appeal. In the event that the Regional Office file cannot be submitted within 3 days from the date of receipt by the Region of an appeal, a memo should be forwarded to Office of Appeals explaining the reason for the delay and the estimated date of submission.

The transmittal memo with the file, or the memo explaining reasons for the delay, should indicate whether there are any other cases (or part of the same case) pending involving the same respondent, by case number and date filed, and should make note of the current status of all related cases. Sufficient detail should be included to indicate whether priority consideration should be given the appeal because of such cases, particularly if a related case is pending an early hearing. If, after transmittal of the aforementioned memo, a new case is filed involving the same respondent, similar information should be forwarded to Office of Appeals by memo.

In all such cases, it is the responsibility of the Regional Office to notify Office of Appeals of any changes in status during the pendency of the appeal.

Notification should be made by telephone or memorandum, depending on the urgency of the situation, to Office of Appeals.

Preparatory to being submitted to Office of Appeals, the Regional Office file should be examined. Care should be taken to assure that memos and reports are accurate and legible.

Any points raised in connection with the appeal should be given further consideration. In the transmittal memo, the Regional Director should give an appraisal of the points made—unless they have already been fully considered, in which case the Regional Director should simply say so—and should note the present positions of regional personnel who worked on the case. The transmittal memo should also make note of the current status of all related cases.

In order to facilitate the handling of those incoming cases that require expedited processing, the information set forth below, together with the preceding information, should be clearly set forth at the beginning of the transmittal memo or the comment on appeal for any case that involves the following:

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- a. A pending hearing in any related case (include the date, if any, set for the hearing)
- b. An appeal that arose from the partial dismissal of a case in which complaint has been issued
- c. Appeals involving unilateral settlement
- d. Appeals from a blocking charge
- e. Appeals with related matter currently pending before the Board (e.g., a report on objections)
- f. Appeals in cases involving active picketing.

During the period in which the file is being reviewed, the Region should transmit to Office of Appeals any new information, developments, or recommendations.

A sustaining of the appeal restores the status of the case as it existed prior to the dismissal. Complaint should be issued, or other appropriate action taken.

10122.12–10122.13

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10122.12 *Pattern for Approval of Request to Withdraw Appeal from Dismissal and Withdrawal of Charge:*

[Charging Party]

Re: [Case name]
[Case number]

Gentlemen:

On [date] I declined to issue complaint in this matter alleging

On [date] an appeal of my action was filed by

On [date] a request to withdraw the charges in this matter was filed by . The latter request is deemed to be a withdrawal of the appeal filed on [date] and a request to withdraw the charges in this matter.

Accordingly, on behalf of the General Counsel, the request to withdraw the appeal is hereby approved and the undersigned Regional Director hereby approves the withdrawal of the charges in this matter.

Very truly yours,

, Regional Director

cc: Other parties
General Counsel

10122.13 *Appeals Remanded to Regions for Further Investigation:*
All cases remanded to the Regions by the Office of Appeals are to receive priority treatment and such further investigation as may be required shall be conducted immediately. The Region should return all remanded cases to Washington within 7 days after receipt, unless the nature or extent of the further investigation required or the unavailability of essential witnesses prevents prompt resubmission. Where the information requested can be transmitted conveniently by telephone or teletype, this means of communication should be utilized.

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In the event the further investigation cannot be completed and the case will not be resubmitted within a 7-day period, the Office of Appeals should be notified of the reason for the delay and given an estimate of the additional time required.